

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Wal-Mart Property Tax Dept.,

Petitioner-Appellant,

v.

City of Ames Board of Review,

Respondent-Appellee.

ORDER

Docket No. 11-100-0841

Parcel No. 09-11-251-300

On April 25, 2012, the above captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant Wal-Mart Property Tax Department, was represented by Attorney Paul Burns of Bradley & Riley, PC, Iowa City, Iowa. Assistant City Attorney Kristine Stone represented the City of Ames Board of Review. Both parties submitted evidence in support of their positions. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Wal-Mart Property Tax Department protested to the City of Ames Board of Review regarding the assessment of the Wal-Mart Super Center located at 534 South Duff Avenue, Ames, Iowa. The 2011 commercial assessment was \$20,300,000, representing \$6,880,000 in land value and \$13,420,000 in improvement value.

Wal-Mart's claim was based on two grounds: 1) that the assessment is not equitable under Iowa Code section 441.37(1)(a); and 2) that the property was assessed for more than the value authorized by law under section 441.37(1)(b). The Board of Review denied the petition.

Wal-Mart then appealed to this Board on the same grounds. While Wal-Mart provided some evidence regarding its equity claim, it conceded at hearing the case is “a market-value case.” Wal-Mart seeks a total assessment of \$10,800,000 based on an appraisal it commissioned.

The subject site is a 22.562-acre (982,797 square feet), irregular shaped lot with frontage access on South Duff Avenue to the west and S.E. 5th Street to the north. Improvements include a 215,744 square-foot building and 593,300 square feet of asphalt paving. Construction on the improvements began in 2007 and was completed in 2008. The store opened for business in the spring of 2008.

Wal-Mart submitted an appraisal completed by Dane Anderson of CBRE, Inc., West Des Moines, Iowa, with an effective date of January 1, 2011. Anderson developed the sales comparison, cost, and income approaches to value. His conclusions are as follows:

Cost Approach - \$11,160,000
Sales Comparison Approach - \$10,790,000
Income Approach - \$10,800,000
Reconciled Value - \$10,800,000

Anderson gave most consideration to the sales comparison approach, with secondary consideration to the income approach. He gave minimal consideration to the cost approach because he believes significant total depreciation exists.

Anderson testified on Wal-Mart’s behalf. In his sales comparison approach, Anderson selected sales of vacated big-box stores, previously occupied by tenants such as Home-Depot, Target, and Wal-Mart. The sales occurred throughout the Mid-West. Anderson essentially asserts that due to the size of the subject property, it would have limited appeal to a *future* single-tenant. For this reason, Anderson stated it would have limited appeal in the market to a single-purchaser or tenant. We find these sales reflect the value of the improvements to a secondary tenant rather than a primary tenant such as Wal-Mart.

Anderson also claims that due to the subject’s size it would suffer greater obsolescence in the cost approach. In fact, Anderson’s appraisal applied approximately 77% total external obsolescence,

with only 5% attributable to physical depreciation, to the property even though it was only three years old at the time of assessment. He attributes more than \$14,000,000 to economic obsolescence.

Anderson asserts this is due to the subject's building size, as well as a recent economic recession and resulting decline in property values "and big box use which is not feasible for speculative purposes."

We note that big box properties like the subject are rarely, if ever, built on speculation. We cannot adopt Anderson's conclusion because it is nearly inconceivable that a property owner would build this type of property knowing that it is almost completely obsolete upon construction.

Even though Anderson completed the income approach to value, his rents, like his sales, reflect second tenant occupancy rather than the rents of equally recognized retailers such as Wal-Mart, Target, and others.

Finally, Anderson testified he did not consider the going-concern value of the subject property. While it may be true that the subject would have some limited appeal to a single purchaser, developing an opinion under these assumed conditions does not consider the property as a going-concern, which is true value assessments are attempting to capture. We note this is different than separately valuing going concern or other impermissible intangibles contemplated by Iowa Code section 441.21(1)(2). As a result, we do not find that the conclusions of his appraisal represent the actual value of the subject property, and we give it no consideration.

The Board of Review submitted an appraisal prepared by Patrick Schulte of Commercial Appraisers of Iowa, Inc., West Des Moines, Iowa. The appraisal has an effective date of January 1, 2011. Schulte's conclusions were as follows:

Cost Approach - \$19,300,000
Sales Approach - \$17,600,000
Income Approach - \$18,100,000

Schulte testified for the Board of Review. Like Anderson, Schulte developed all three approaches to value. However, he relied most on the cost approach and gave limited consideration to both the sales and income approaches to value.

Schulte asserts the cost approach is the best indicator of value due to minimal accrued depreciation. Schulte further testified that he believed he had good information on the cost to build and land value because the subject property is relatively new. Schulte determined physical depreciation of 8% and functional/external obsolescence of 10%. Schulte does not believe the total accrued obsolescence of the property is as great as Anderson asserts. Schulte stated “it’s a brand new store and Wal-Mart chose to build it.” As such, he doesn’t believe a brand new store would be totally obsolete.

Schulte stated that while he recognized Iowa law prefers the sales comparison approach when highly comparable data is available, he believes there is a lack of highly comparable properties to properly develop the sales or income approaches to value. Therefore, he gives the cost approach the most consideration. He further stated that he likely would not have included the sales comparison approach because of the limited data; however, he included it because this assignment was for assessment appeal purposes.

Schulte relied on four comparable sales whereas Anderson considered seven comparable sales. Unlike Anderson, all of Schulte’s sales were located in Iowa. Schulte testified that he searched “all of Iowa, all of Nebraska, all of the Quad Cities (both sides of the river) and a smattering of Missouri” for comparable properties. He considered it a reasonable search area.

Wal-Mart was critical of Schulte’s sales comparison approach because it used properties with smaller building areas; applies adjustments Wal-Mart believes are understated, such as adjustments for the differences between a fee simple and leased fee property rights; and reconciles at the high end of the adjusted-price-per-square-foot range. Schulte’s adjusted price per square foot ranged from \$36.33

to \$83.37, and he selected \$83.00 as his final opinion. We note the median adjusted price per square foot is \$75.02, which may indicate the \$36.33 is an outlier. Schulte agreed, with hindsight, he may likely be slightly lower (\$75 to \$80 per square foot; or roughly \$15,900,000 to \$16,900,000) if he were to reconcile the information today. We note this is relatively inconsequential because he ultimately gave this approach minimal consideration due to the limited and low-quality data.

Schulte also stated that even with hindsight he would still give the sales approach the least consideration. Schulte re-asserted his position that he developed the approach simply because it was a recognized and preferred method by Iowa law, but he did not believe it was the best data available to credibly determine the value of the subject property. As such, he was hesitant to form a new reconciliation at hearing, stating “it would be difficult to comprehend what I might have done in an unbiased way;” and “I would still clearly feel the sales approach was the least reliable with the least reliable data.” Additionally, we again note he gave most consideration to the cost approach which sets the upper end of his range. Summing up why he believed the cost approach was more important than the sales approach, he referred to Wal-Mart stating “they don’t sell them, they occupy them.”

Regarding the income approach, Schulte asserts that in Ames there is close to 100% commercial occupancy. He based this conclusion on a study he had done, first in 2010, and subsequently in a follow-up for this assignment. Additionally, his appraisal notes minimal vacancy in Ames big box retail space. Schulte estimated a market rent of \$8.50 per square foot and a total collection and vacancy loss of 7.5%.

Schulte explained his capitalization rate (cap rate) was extracted from sales he is familiar with in the market place, including a variety of single and multi-tenant occupancies, ranging from large to small improvements. Additionally, he notes that the existing tenant is relevant. As such, he uses cap rates from similar properties and tenants. Likewise, when extracting rent, he considers relatively large, high credit tenants. He states that he did not appraise the property specifically as a Wal-Mart, but he

did appraise it given it is “one of the typical users that would have some reasonable quality credit.” He does not believe it would be correct to select a cap rate by “assuming that every Wal-mart, K-mart and Target should be appraised as if every lease was to ‘John and Mary Peterson’ who have no net worth,” because it would result in the use of a high cap rate where poor quality credit is assumed. Rather, Schulte explains “we are assuming reasonably good quality credit when selecting the capitalization rate.” He reconciled to a cap rate of 8.25%.

When asked if he valued the property as a going-concern, Schulte stated that he valued it as if it was under normal occupancy for the type of store that it was. He stated, “We didn’t value the Wal-Mart business, but we valued the likelihood of a large national tenant/occupant; whether that is Wal-Mart or anyone. I don’t know if that is going-concern.” We note that although perhaps not fully understood by Schulte, his answer indicates he is valuing the subject property as a going-concern. Furthermore, his appraisal is the only evidence in the record that values the subject property as a going-concern.

David Hebert, Property Tax Manager for Wal-Mart, testified regarding what he considers to be concerns with equitability in the assessment. He testified particularly about Exhibit 2, a chart comparing the subject to five other big-box stores in the Ames area. However, at hearing, Wal-Mart conceded it believed this case was about “market-value” and not really about equity. Because the parties agree the issue before this Board is market-value and because the evidence provided regarding equity is scant, we will not reach this issue.

Hebert was also critical of the Ames City Assessor including a “garden center” in the total building area of the subject property. He contends the area is not insulated, although it has suspended heating; it is not air-conditioned but has “big fans on the ceiling;” and the “walls are made out of fabric.” We note, however, that Wal-Mart’s own appraisal also included this area in the total building area.

Based on photos included in Schulte's appraisal, it appears there are three "fabric" doors, but they cover glass sliding doors and can be rolled up to allow for access when the seasonal out-door garden center is open. While the interior portion of this garden center may not be centrally heated and cooled, by Hebert's admission it does have a heating/cooling system in place, albeit of lower quality than central heating or cooling. Additionally, we find his testimony regarding "fabric or soft-sided walls" to be disingenuous. The vast majority of the walls are similar concrete block like the remainder of the building, and the only fabric is a covering over glass sliding doors, which is likely to provide some insulation in the colder months and easy access to the out-door garden area when its in season.

While we ultimately give Hebert's testimony and evidence limited consideration, we note he stated he was unsure how the assessor comes up with values for Wal-Mart or other similar big box stores. We are unsure as well. We requested a full property record card for the subject property and the equity comparables noted by Hebert. We specifically requested the property record cards for these properties include the pricing used to value each property and not just the Beacon printouts¹. The response we received from the Ames Board of Review was a replication of the data already in the record (copies of the online Beacon printouts for each property) as well as a single, hand-written card with generic information and total assessments. In a letter, the Board of Review states that "According to the City Assessor's office, they began switching over to the online property cards in 2005. These are the only property record cards that are maintained for commercial property in Ames." This Board finds this information is insufficient for a property owner to understand how the assessment was determined.

Charlie Terrell, Senior Director of Wal-Mart Property Tax Division also testified. His testimony generally explained how Wal-Mart decides when to move to newer or bigger stores and that

¹ Beacon is an on-line system used by some assessor jurisdictions; however, is not typically the full property record card which includes the pricing of the properties for cost valuation.

it typically sells its older stores for pennies-on-the-dollar of cost to build. He testified, “Wal-Mart considers itself ‘first generation’ and they typically sell to ‘second generation’ or ‘tier-two tenants.’”

Terrell indicated that Wal-Mart doesn’t want to leave buildings vacant, but rather it prefers to get it “off their portfolio and onto someone else’s.” He also stated that “we [Wal-Mart] are not in the business to build a building that we hope to sell for a profit ‘x’ number of years later.” These comments could generally indicate that Wal-Mart is not always seeking to sell or rent the properties for market value. Additionally, he testified that there may be some restrictions when selling the properties that limit the number of potential buyers or tenants. Overall, Terrell’s testimony was limited regarding the actual value of the subject property, and we give it minimal consideration.

We find the value of the subject property must consider the property as a going-concern. By failing to consider this, the property is undervalued and fails to capture the market value as considered by the Code. For the reasons stated herein, we find Schulte’s appraisal as the best evidence in the record and give it most consideration. Even though we reject Wal-Mart’s own appraisal, we find sufficient evidence has been provided to support a claim of over-assessment.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment*

Appeal Bd., 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The six criteria include evidence showing

"(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination."

Id. at 579-580. The gist of this test is ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1).

Although the claim was raised to this Board, Wal-Mart provided insufficient evidence to show it was inequitably assessed. Moreover, it conceded its primary claim was that it is over-assessed. We do share Wal-Mart's concern regarding the uncertainty of how the Ames City Assessor is actually valuing the subject property and other similar properties on a cost basis, as there is no information on the property record cards identifying the process. We also note that assessors are required by law to

value property using the *Iowa Real Property Appraisal Manual*. Iowa Code § 441.21(1)(h).

Additionally, it would be prudent if it was evident on the property record card that the *Manual* was actually used in the valuation.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Wal-Mart and the Ames City Board of Review provided appraisals on the subject property. Both appraisals developed all three approaches to value. However, Anderson acknowledged that he did not value the property as a going-concern, whereas Schulte did. The Iowa Supreme Court has held that an assessor is “entitled to consider the use of the [assessed] property as a going concern.” *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 788 (Iowa 2009) (citations omitted). Valuing the property as a going concern is different from “[s]pecial value or use value of a property to its owner, and the good will or value of a business which uses the property,” as described in Iowa Code section 441.21(2). *Id.* at 786-788. The special use exclusion has a narrow interpretation. *Id.* “When an assessor considers the use being made of a property, he is ... recognizing the effect of the use upon the value of the property itself. He is not adding on separate items for good will, patents, or personnel.” *Id.* at 787 (quoting *Maytag Co. v. Partridge*, 210 N.W.2d 584, 590 (Iowa 1973)).

Additionally, although Wal-Mart suggested its market value is limited because of restrictions it places on its sales, and a limited number of buyers for properties like the subject, we do not adopt its contentions. Iowa case law does “not support a reduction in market value based on a property owner’s self-imposed restrictions.” *Id.* at 789.


In this case, it is appropriate to consider the fact that the property is a going concern. Because Anderson testified that he did not value the property as a going-concern, we give his appraisal no consideration. Schulte gave most consideration to the cost approach, asserting this method has the best

and most reliable data. He gave minimal consideration to the sales comparison approach, asserting that he really only developed it because it is a method preferred by Iowa law. However, he does not believe the comparables are “good” or represent the most reliable data available for analysis. Where the parties convince PAAB that comparable sales do not exist or cannot readily determine market value, other factors such as cost and income can be used. *Id.*; Iowa Code § 441.21(2). We find that Schulte’s appraisal correctly values the subject property as a going-concern. Furthermore, Schulte’s appraisal concludes a value that is less than the current assessed value of the subject property. This evidence supports the claim that the property is over-assessed.

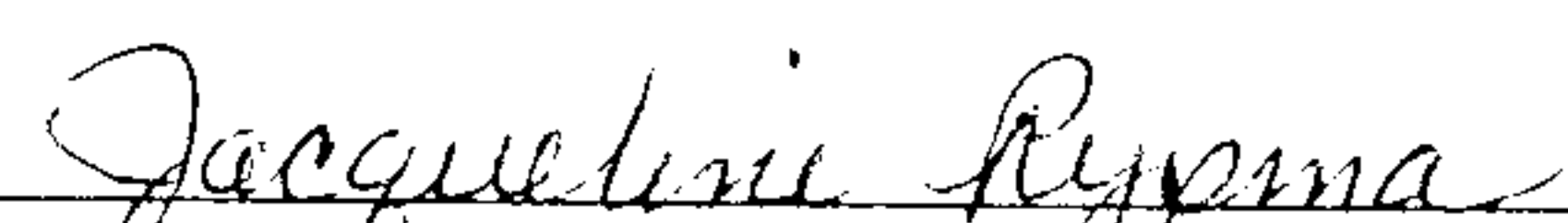
THE APPEAL BOARD ORDERS the assessment of the Wal-Mart Super Center located at 534 South Duff Avenue, Ames, Iowa, is modified to a total value of \$19,000,000, representing \$5,900,000 in land value and \$13,100,000 in improvements as of January 1, 2011.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Story County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 27 day of June, 2012.


Karen Oberman, Presiding Officer


Richard Stradley, Board Member


Jacqueline Rypma, Board Member

Cc:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>6-22</u> , 2012	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	